

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Michael B. Carothers,	)	C/A NO. 2:13-1383-CMC-BHH
	)	
Petitioner,	)	
	)	<b>OPINION and ORDER</b>
v.	)	
	)	
Kenny Atkinson, Warden, FPC Edgefield,	)	
	)	
Respondent.	)	
_____	)	

This matter is before the court<sup>1</sup> on Petitioner's *pro se* petition for habeas corpus, construed as having been filed in this court pursuant to 28 U.S.C. § 2241.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Bruce Howe Hendricks for pre-trial proceedings and a Report and Recommendation ("Report"). On June 10, 2013, the Magistrate Judge issued a Report recommending that the petition be dismissed without prejudice and without issuance and service of process. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Petitioner filed objections to the Report on June 21, 2013.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo*

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<sup>1</sup>This petition was originally assigned to the Honorable Joseph F. Anderson, Jr., United States District Judge. However, because Petitioner's allegations directly bear upon the sentence imposed by this court, this matter was reassigned to the undersigned for disposition.

determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After conducting a *de novo* review as to objections made, and considering the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Petitioner's objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Petitioner argues he has no available remedy to challenge his allegedly unconstitutional sentence because a motion pursuant to 28 U.S.C. § 2255 "is only a [m]otion on the prior illegal-unlawful conviction and/or sentence, that does not afford [Defendant] the same Article III Case and Controversy which is afforded to state prisoners under § 2254 nor inwhich [sic] is afforded to the petitioner under § 2241." Reply at 1 (ECF No. 14).

This and Petitioner's other contentions contained in his objections are without merit. Accordingly, this petition is dismissed without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
July 22, 2013